

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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GARY LA BARBERA, et al.,

Plaintiffs,

- against -

ORDER

PASS 1234 TRUCKING, INC.,

CV 2004-1364 (SJ)(MDG)

Defendant.

- - - - - X

This order addresses the letter motion dated June 23, 2008 of Michael Bauman, plaintiffs' counsel, to compel defendant Pass 1234 Trucking, Inc. to comply with notices of depositions served "in furtherance of enforcement of the judgment." Ct. doc. 29. This motion is denied without prejudice, in the absence of proof that the defendant has been properly served with a subpoena.

Federal courts have consistently held that a defaulting defendant should be treated as a non-party with respect to any discovery sought. See Hawkins v. AMA Mgmt., Ltd., No. C06-847P, 2007 WL 869955, at \*2 (W.D. Wash. Mar. 20, 2007); Western Metal Industry Pension Trust v. Ruthford's Auto Rebuild, Ltd., No. C06-525P, 2006 U.S. Dist. LEXIS 74274, at \*2-\*4 (W.D. Wash. Oct. 12, 2006); Hill Design, Inc. v. Hodgdon, No. 03-CV-074-SM, 2006 WL 1134918, at \*1 (D.N.H. Apr. 26, 2006); Blazek v. Capital Recovery Assocs., Inc., 222 F.R.D. 360, 361 (E.D. Wis.c. 2004). Plaintiffs thus must comply with Rule 45 of the Federal Rules of Civil Procedure in conducting discovery against the defaulting

defendant. Hawkins, 2007 WL 8.969955 at \*3; Blazek, 222 F.R.D. at 361.

That plaintiffs are seeking to utilize available state procedures for enforcement of a judgment, as permitted under Fed. R. Civ. P. 69, makes no difference. New York law also requires that a testimonial enforcement subpoena be served in accordance with rules governing subpoena service -- i.e., in the same manner as a summons. See Siegel, Practice Commentaries, McKinney's Cons. Laws of N.Y., Book 7B, CPLR C5224:2 at 243-44. See also Card v. Houghton, 179 Misc. 33, 37 N.Y.S.2d 335 (N.Y.Sup. 1942).

**SO ORDERED.**

Dated: Brooklyn, New York  
June 25, 2008

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/s/  
MARILYN D. GO  
UNITED STATES MAGISTRATE JUDGE